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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120109034-2153-02]]

RIN 0648-XC168

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Fishing Year 2012

Days-At-Sea Adjustment for Common Pool Fishery; Announcement of Fishing Year 2011

Sector Annual Catch Entitlement Carryover

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: NMFS adjusts the differential days-at-sea (DAS) rate for common pool vessels for fishing year (FY) 2012 due to overages of FY 2011 catch levels. This measure will help prevent FY 2012 catch levels from being exceeded. NMFS also announces the final amount of unused FY 2011 annual catch entitlement (ACE) carryover available to each sector in FY 2012.

DATES: Effective [insert date of publication in the FEDERAL REGISTER], through April 30, 2013.

FOR FURTHER INFORMATION CONTACT: Brett Alger, Fisheries Management Specialist, (978) 675-2153.

SUPPLEMENTARY INFORMATION:

FY 2012 Differential DAS Counting for Common Pool Vessels

Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan requires that a catch overage of a sub-annual catch limit (sub-ACL) or total ACL, triggers an accountability measure (AM) for common pool vessels in the distinct Differential DAS Area where each stock is predominantly caught. The AM is a differential DAS adjustment to all Category A DAS used by common pool vessels, and is applied to the time spent in the applicable DAS counting area where a vessel fishes. The AMs account for the percentage by which the sub-ACL or total ACL is exceeded, and are meant to prevent overages of future catch levels. For example, an overage of the Atlantic halibut sub-ACL requires a differential DAS rate adjustment to be applied to common pool vessels fishing in the area(s) that past catch information shows the majority of the Atlantic halibut is caught. The AM regulation at 50 CFR 648.82(n) also requires applying an additional differential DAS counting factor in an area for a specific stock if the sub-ACL is exceeded again in a subsequent year, to account for both year's overages. For example, if the sub-ACL for Georges Bank (GB) winter flounder was exceeded in FY 2010 by 60 percent and triggered a differential DAS adjustment (1.6) in FY 2011, and the sub-ACL was exceeded again in FY 2011 by 30 percent (requiring a 1.3 differential), then in FY 2012, a differential DAS rate of 2.1 (1.6×1.3) would be applied.

Final FY 2011 sector and common pool catch information became available in June 2012. This information showed that in the commercial groundfish fishery (sector and common pool only), the sub-ACL for Atlantic halibut was exceeded by 29 percent. This requires NMFS to implement a differential DAS rate of 1.3 in the Offshore Gulf of Maine (GOM) and the Inshore GB Differential DAS areas as an AM for Atlantic halibut.

Final FY 2011 sector and common pool catch information shows that the sub-ACL for northern windowpane flounder was exceeded by 42 percent. The northern windowpane flounder

overage occurred despite a differential DAS rate of 1.3 applied in FY 2011 due to an overage in FY 2010 of 27 percent. As a result, NMFS is required to implement a differential DAS rate of 1.8 (1.3×1.4) in the Offshore GB Differential DAS Area as a result of the consecutive FY 2010 and 2011 overages of northern windowpane flounder.

In addition to the commercial groundfish fishery information, NMFS has preliminary FY 2011 catch estimates for other components of the groundfish fishery, i.e., exempted fisheries, non-groundfish vessels (e.g., scallop vessels), and state-only permitted vessels. Based on these preliminary estimates of the other components of the groundfish fishery and final FY 2011 sector and common pool catch information, the total ACL for southern windowpane flounder was exceeded by 135 percent. This overage also requires a differential DAS adjustment for common pool vessels fishing in the area where the stock is predominantly caught. Therefore, a differential DAS rate of 2.4 will be applied to common pool vessels fishing in the Southern New England (SNE)/Mid-Atlantic (MA) Differential DAS Area as an AM for southern windowpane flounder. Further adjustments to the common pool differential DAS rate are possible based on final 2011 catch information for other components of the groundfish fishery.

FY 2011 Sector ACE Carryover

The regulations allow each sector to carry over into the following fishing year up to 10 percent of its initial allocation for all but one groundfish stock. ACE for GB yellowtail flounder cannot be carried over because catch levels for this stock are set each year by the U.S./Canada Resource Sharing Understanding. In addition, although the New Hampshire and Maine Permit Banks are allocated ACE for each FY, they are not eligible to carry over any amount of uncaught ACE. The following tables show the carryover for each Sector for FY 2011 based on final catch data.

Table 1. Summary of FY 2011 ACE Carryover for All Sectors Combined (lb and mt)

Stock	FY 2011 Total ACE ²		FY 2011 Catch ³		FY 2011 ACE Carryover Cap ⁴		FY 2011 ACE Carryover ⁵	
	lb	mt	lb	mt	lb	mt	lb	mt
GB Cod	9,975,654	4,525	7,088,482	3,215.3	926,569	420.3	920,422	417.5
GOM Cod	11,357,677	5,152	9,629,835	4,368	1,036,390	470.1	1,030,072	467.2
GB Haddock	75,864,406	34,412	8,441,139	3,828.8	6,699,934	3,039	6,699,934	3,039
GOM Haddock	1,871,957	849	1,066,284	483.7	169,714	77.0	169,714	77.0
SNE/MA Yellowtail ¹	941,762	427	802,444	364	89,016	40.4	85,401	38.7
CC/GOM Yellowtail Flounder ¹	2,169,519	984	1,752,994	795.1	200,737	91.1	198,321	90.0
Plaice	7,302,377	3,312	3,597,140	1,631.6	665,279	301.8	665,279	301.8
Witch Flounder	2,847,251	1,291	2,189,014	992.9	266,017	120.7	265,982	120.6
GB Winter Flounder	4,796,109	2,175	4,242,164	1,924.2	439,406	199.3	328,831	149.2
GOM Winter Flounder	716,989	325	348,755	158.2	68,270	31.0	68,270	31.0
Redfish	18,034,606	8,180	5,959,501	2703.2	1,654,105	750.3	1,654,105	750.3
White Hake	7,038,744	3,193	6,645,585	3014.4	648,163	294.0	347,632	157.7
Pollock	34,096,310	15,466	16,629,759	7,543.1	3,046,207	1,381.7	3,046,207	1,381.7

¹ Southern New England (SNE)/Mid-Atlantic (MA), Cape Cod (CC)/Gulf of Maine (GOM).

² Amount of ACE allocated in FY 2011 in addition to ACE that was carried over from FY 2010.

³ Includes all landings and discards.

⁴ Maximum amount of ACE that can be carried over based on 10 percent of the initial FY 2011 allocations. In other words, carry over from FY 2010 is not included in this calculation.

⁵ Amount of unused FY 2011 ACE, calculated as the difference between a sector's final catch and a sector's final ACE for each stock, including all ACE transfers.

Table 2. FY 2011 ACE Carryover Available to Each Sector in FY 2012 by Stock (lb)

Sector Name*	GB Cod	GOM Cod	GB Haddock	GOM Haddock	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
FGS	267,129	21,091	428,242	2,243	49	3,519	3,782	2,280	121	1,600	48,233	732	241,293
NCCS	1,623	8,144	8,175	583	835	1,274	1,018	556	303	657	7,316	5,289	13,869
NEFS 2	52,878	210,521	774,488	31,438	221	43,330	59,978	36,995	2,802	15,306	276,158	0	380,225
NEFS 3	11,953	185,194	10,844	21,105	269	19,675	30,153	8,377	147	7,973	25,833	33,649	237,331
NEFS 4	40,394	77,782	360,210	10,317	2,610	10,152	62,315	22,821	3,073	3,420	109,116	47,804	171,294
NEFS 5	19,050	1,142	264,437	556	27,035	2,192	9,967	4,702	8,795	235	4,810	1,461	9,479
NEFS 6	27,065	26,427	196,933	6,535	5,945	5,945	25,946	13,832	6,284	2,680	88,245	25,642	101,123
NEFS 7	41,684	4,578	255,504	964	4,298	5,560	23,253	8,405	50,305	632	10,733	4,943	21,299
NEFS 8	60,853	5,268	393,851	368	6,527	13,831	11,886	7,123	71,409	2,446	7,193	3,288	18,806
NEFS 9	138,935	17,467	806,790	8,058	9,361	21,644	57,442	22,785	85,500	1,769	96,036	20,133	119,823
NEFS 10	11,236	58,827	21,056	4,432	632	28,640	13,828	9,841	68	19,836	9,434	6,371	46,479
NEFS 11	3,747	133,314	2,420	4,294	20	2,991	10,189	4,184	4	1,468	15,941	15,979	202,406
NEFS 12	145	25,827	178	1,473	3	1,003	5,134	1,656	11	230	17,612	16,364	91,058
NEFS 13	75,804	7,453	1,003,173	1,470	14,614	6,338	26,447	13,698	47,928	909	75,932	12,254	72,010
PCCGS	836	42,394	2,130	3,678	425	1,778	39,532	10,441	9	931	33,842	20,969	93,148
SHS	155,540	195,245	1,942,499	68,804	8,812	21,616	269,884	91,829	44,007	4,304	800,587	128,971	1,193,104
SHS 3	5,168	869	131,409	2,604	3,598	4,607	7,654	3,893	44	2,363	26,997	3,663	32,280
TSS	6,403	8,528	97,593	795	147	4,226	6,871	2,564	8,019	1,512	88	121	1,182

*Georges Bank Cod Fixed Gear Sector (FGS), Northeast Coastal Communities Sector (NCCS), Northeast Fishery Sectors (NEFS), Port Clyde Community Groundfish Sector (PCCGS), Sustainable Harvest Sector (SHS), and Tri-State Sector (TSS)

Table 3. FY 2011 ACE Carryover Available to Each Sector in FY 2012 by Stock (mt)

Sector Name	GB Cod	GOM Cod	GB Haddock	GOM Haddock	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
FGS	121.2	9.6	194.2	1.0	0.0	1.6	1.7	1.0	0.1	0.7	21.9	0.3	109.4
NCCS	0.7	3.7	3.7	0.3	0.4	0.6	0.5	0.3	0.1	0.3	3.3	2.4	6.3
NEFS 2	24.0	95.5	351.3	14.3	0.1	19.7	27.2	16.8	1.3	6.9	125.3	0.0	172.5
NEFS 3	5.4	84.0	4.9	9.6	0.1	8.9	13.7	3.8	0.1	3.6	11.7	15.3	107.7
NEFS 4	18.3	35.3	163.4	4.7	1.2	4.6	28.3	10.4	1.4	1.6	49.5	21.7	77.7
NEFS 5	8.6	0.5	119.9	0.3	12.3	1.0	4.5	2.1	4.0	0.1	2.2	0.7	4.3
NEFS 6	12.3	12.0	89.3	3.0	2.7	2.7	11.8	6.3	2.9	1.2	40.0	11.6	45.9
NEFS 7	18.9	2.1	115.9	0.4	1.9	2.5	10.5	3.8	22.8	0.3	4.9	2.2	9.7
NEFS 8	27.6	2.4	178.6	0.2	3.0	6.3	5.4	3.2	32.4	1.1	3.3	1.5	8.5
NEFS 9	63.0	7.9	366.0	3.7	4.2	9.8	26.1	10.3	38.8	0.8	43.6	9.1	54.4
NEFS 10	5.1	26.7	9.6	2.0	0.3	13.0	6.3	4.5	0.0	9.0	4.3	2.9	21.1
NEFS 11	1.7	60.5	1.1	1.9	0.0	1.4	4.6	1.9	0.0	0.7	7.2	7.2	91.8
NEFS 12	0.1	11.7	0.1	0.7	0.0	0.5	2.3	0.8	0.0	0.1	8.0	7.4	41.3
NEFS 13	34.4	3.4	455.0	0.7	6.6	2.9	12.0	6.2	21.7	0.4	34.4	5.6	32.7
PCCGS	0.4	19.2	1.0	1.7	0.2	0.8	17.9	4.7	0.0	0.4	15.4	9.5	42.3
SHS	70.6	88.6	881.1	31.2	4.0	9.8	122.4	41.7	20.0	2.0	363.1	58.5	541.2
SHS 3	2.3	0.4	59.6	1.2	1.6	2.1	3.5	1.8	0.0	1.1	12.2	1.7	14.6
TSS	2.9	3.9	44.3	0.4	0.1	1.9	3.1	1.2	3.6	0.7	0.0	0.1	0.5

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive prior notice and opportunity for public comment on these in-season DAS Differential and ACE carryover adjustments. Delay in the adjustments' effectiveness is impracticable, unnecessary, and contrary to the public interest and could hamper a fisherman's ability to make business decisions. Plus, the public has already been provided with an opportunity for notice and comment on potential adjustments, including the basis for such adjustments.

Notice and comment are impracticable, unnecessary, and contrary to the public interest. A delay implementing adjustments based on this information would prolong the time period that the fishery would be operating under a less restrictive differential DAS rate and could subject the vessels to FY 2012 overages, which would require even more restrictive AMs next year. Also, ACE carryover amounts may increase fishing opportunities available to each sector for FY 2012 or affect a sector's trading decisions for available ACE.

Common pool fishermen and sectors adjust their fishing plans based on available DAS and ACE. Delaying the effectiveness of the DAS Differential adjustments could hamper a common pool fisherman's ability to make effective business decisions based on the number of DAS available to them. Likewise, a delay in the ACE carryover adjustments for sectors could disrupt sector operations and prevent sectors from planning for the fishing year based on the amount of ACE available to them in FY 2012. FY 2011

ACE carryover may increase fishing opportunities available to each sector in FY 2012, especially if a sector has a small allocation for particular stocks. A delay in this action could result in foregone fishing opportunities during summer months when weather conditions are generally better. Because ACE may be traded between sectors, a delay in this action could also affect the ACE available to the market for trading, to the economic detriment of the fishery.

Lastly, a delay for prior opportunity for public comments is unnecessary and impracticable because the public was provided the opportunity to comment on the possibility of the anticipated adjustments, including the basis for such adjustments. Both the Framework Adjustment 47 final rule and the FY 2012 adjustment rule based on final sector rosters indicated that future adjustments may be made based on updated FY 2011 catch information and final sector rosters. Additionally, the Amendment 16 final rule indicated that differential DAS may be adjusted as an AM for the Common Pool. NMFS is making these adjustments now because FY 2011 catch information and sector final rosters only recently became available.

For the same reasons stated above, the AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness so that this final rule may become effective upon filing. Waiving this delay in effectiveness will help fishermen avoid exceeding FY 2012 catch limits. Finally, implementing this exemption as early as

possible will provide fishermen and sectors the flexibility to strategize and adjust their plans for the remainder of the fishing year.

Authority: 16 U.S.C. 1801 et seq.

Dated: September 21, 2012

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National Marine Fisheries Service.

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